

Staff Note:

Professor David Owens of the UNC School of Government brought the following technical corrections to our attention. Each of the corrections makes needed changes resulting from S.L. 2019-111, which consolidated the statutes on planning and regulation of development for counties (formerly in Chapter 153A) and cities and town (formerly in Chapter 160A) into a new Chapter 160D. Session Law 2019-111 is attached as a separate document for background reference.

In the process of compiling these corrections, it came to staff's attention that many external cross references to G.S. sections that S.L. 2019-111 repealed were overlooked in the session law. Staff will continue compiling these additional conforming changes and present them to the Commission when complete. The technical corrections in this document make the changes requested by Professor Owens and one additional correction internal to Chapter 160D.

Proposed Technical Correction:

**SECTION #.(a)** G.S. 1-120.2 reads as rewritten:

**"§ 1-120.2. Filing of notice by cities and counties in certain cases.**

★ The governing body of a city or county may, by ordinance under ~~Part 5 of Article 19 of Chapter 160A~~ Article 11 of Chapter 160D of the General Statutes relating to building inspection, or ~~Part 6 of Article 19 of Chapter 160A~~ Article 12 of Chapter 160D of the General Statutes relating to minimum housing standards, ~~or Part 4 of Article 18 of Chapter 153A relating to building inspection,~~ provide that upon the issuance of a complaint and notice of hearing or order pursuant ~~thereto, to it,~~ a notice of lis pendens, with a copy of the complaint and notice of hearing or order attached ~~thereto, to it,~~ may be filed in the office of the clerk of superior court of the county where the property is located. When a notice of lis pendens and a copy of the complaint and notice of hearing or order is filed with the clerk of superior court, it shall be indexed and cross-indexed in accordance with the indexing procedures of G.S. 1-117. From the date and time of indexing, the complaint and notice of hearing or order ~~shall be~~ is binding upon the successors and assigns of the owners of and parties in interest in the building or dwelling. A copy of the notice of lis pendens shall be served upon the owners and parties in interest in the building or dwelling at the time of filing in accordance with G.S. ~~160A-428, 160A-445, or 153A-368 as applicable.~~ 160D-1121 and G.S. 160D-1206. The notice of lis pendens ~~shall remain~~ remains in full force and effect until cancelled. The ordinance may authorize the cancellation of the notice of lis pendens under certain circumstances. Upon receipt of notice from the city, the clerk of superior court shall cancel the notice of lis pendens. (1995, c. 158, s. 1.)"

Explanation:

In addition to other clean up changes, this technical correction makes conforming changes to external cross-references to account for repealed statutes and their corresponding replacement in the current Chapter 160D.

Background:

*Former Part 5 of Article 19 of Chapter 160A*

Article 19.

Planning and Regulation of Development.

Part 5. Building Inspection.

*Current Article 11 of Chapter 160D*

Article 11.

Building Code Enforcement.

*Former Part 6 of Article 19 of Chapter 160A*

Article 19.

Planning and Regulation of Development.

Part 6. Minimum Housing Standards.

*Current Article 12 of Chapter 160D*

Article 12.

Minimum Housing Codes.

*Former G.S. 160A-428*

**§ 160A-428. Action in event of failure to take corrective action.**

If the owner of a building or structure that has been condemned as unsafe pursuant to G.S. 160A-426 shall fail to take prompt corrective action, the local inspector shall give him written notice, by certified or registered mail to his last known address or by personal service:

- (1) That the building or structure is in a condition that appears to meet one or more of the following conditions:
  - a. Constitutes a fire or safety hazard.
  - b. Is dangerous to life, health, or other property.
  - c. Is likely to cause or contribute to blight, disease, vagrancy, or danger to children.
  - d. Has a tendency to attract persons intent on criminal activities or other activities which would constitute a public nuisance.
- (2) That a hearing will be held before the inspector at a designated place and time, not later than 10 days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
- (3) That following the hearing, the inspector may issue such order to repair, close, vacate, or demolish the building or structure as appears appropriate.

If the name or whereabouts of the owner cannot after due diligence be discovered, the notice shall be considered properly and adequately served if a copy thereof is posted on the outside of the building or structure in question at least 10 days prior to the hearing and a notice of the hearing is published in a newspaper having general circulation in the city at least once not later than one week prior to the hearing. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2000-164, s. 2; 2009-263, s. 4.)

*Former G.S. 160A-445*

**§ 160A-445. Service of complaints and orders.**

(a) Complaints or orders issued by a public officer pursuant to an ordinance adopted under this Part shall be served upon persons either personally or by registered or certified mail. When service is made by registered or certified mail, a copy of the complaint or order may also be sent

by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

(a1) If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by registered or certified mail, and the public officer makes an affidavit to that effect, then the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the city at least once no later than the time at which personal service would be required under the provisions of this Part. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

(b) Repealed by Session Laws 1997, c. 201, s. 1. (1939, c. 287, s. 5; 1965, c. 1055; 1969, c. 868, ss. 3, 4; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1977, c. 912, s. 14; 1979, 2nd Sess., c. 1247, s. 38; 1991, c. 526, s. 1; 1997-201, s. 1.)

*Former G.S. 153A-368*

**§ 153A-368. Action in event of failure to take corrective action.**

If the owner of a building that has been condemned as unsafe pursuant to G.S. 153A-366 fails to take prompt corrective action, the local inspector shall by certified or registered mail to his last known address or by personal service give him written notice:

- (1) That the building or structure is in a condition that appears to meet one or more of the following conditions:
  - a. Constitutes a fire or safety hazard.
  - b. Is dangerous to life, health, or other property.
  - c. Is likely to cause or contribute to blight, disease, vagrancy, or danger to children.
  - d. Has a tendency to attract persons intent on criminal activities or other activities that would constitute a public nuisance.
- (2) That a hearing will be held before the inspector at a designated place and time, not later than 10 days after the date of the notice, at which time the owner is entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
- (3) That following the hearing, the inspector may issue any order to repair, close, vacate, or demolish the building that appears appropriate.

If the name or whereabouts of the owner cannot after due diligence be discovered, the notice shall be considered properly and adequately served if a copy thereof is posted on the outside of the building in question at least 10 days before the day of the hearing and a notice of the hearing is published at least once not later than one week before the hearing. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 2017-109, s. 2.)

*Current G.S. 160D-1121*

**§ 160D-1121. Action in event of failure to take corrective action.**

If the owner of a building or structure that has been condemned as unsafe pursuant to G.S. 160D-1119 fails to take prompt corrective action, the local inspector shall give written notice, by certified mail to the owner's last known address or by personal service, of all of the following:

- (1) That the building or structure is in a condition that appears to meet one or more of the following conditions:
  - a. Constitutes a fire or safety hazard.
  - b. Is dangerous to life, health, or other property.
  - c. Is likely to cause or contribute to blight, disease, vagrancy, or danger to children.
  - d. Has a tendency to attract persons intent on criminal activities or other activities that would constitute a public nuisance.
- (2) That an administrative hearing will be held before the inspector at a designated place and time, not later than 10 days after the date of the notice, at which time the owner will be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter.
- (3) That following the hearing, the inspector may issue such order to repair, close, vacate, or demolish the building or structure as appears appropriate.

If the name or whereabouts of the owner cannot, after due diligence, be discovered, the notice shall be considered properly and adequately served if a copy is posted on the outside of the building or structure in question at least 10 days prior to the hearing and a notice of the hearing is published in a newspaper having general circulation in the local government's area of jurisdiction at least once not later than one week prior to the hearing. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 33, 51(a), (b), (d).)

*Current G.S. 160D-1206*

**§ 160D-1206. Service of complaints and orders.**

(a) Complaints or orders issued by a public officer pursuant to an ordinance adopted under this Article shall be served upon persons either personally or by certified mail. When service is made by certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the certified mail is unclaimed or refused but the regular mail is not returned by the post office within 10 days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

(b) If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by certified mail, and the public officer makes an affidavit to that effect, then the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the jurisdiction at least once no later than the time at which personal service would be required under the provisions of this Article. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

Proposed Technical Correction:

**SECTION #.(b)** G.S. 160D-403 reads as rewritten:

**"§ 160D-403. Administrative development approvals and determinations.**

(a) Development Approvals. – To the extent consistent with the scope of regulatory authority granted by this Chapter, no person shall commence or proceed with development without first securing any required development approval from the local government with jurisdiction over the site of the development. A development approval shall be in writing and may contain a

provision requiring the development to comply with all applicable State and local laws. A local government may issue development approvals in print or electronic form. Any development approval issued exclusively in electronic form shall be protected from further editing once issued. Applications for development approvals may be made by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for development approval for such development as is authorized by the easement.

(b) Determinations and Notice of Determinations. – A development regulation enacted under the authority of this Chapter may designate the staff member or members charged with making determinations under the development regulation.

The officer making the determination shall give written notice to the owner of the property that is the subject of the determination and to the party who sought the determination, if different from the owner. The written notice shall be delivered by personal delivery, ~~electronic mail, email,~~ or by first-class mail. The notice shall be delivered to the last address listed for the owner of the affected property on the county tax abstract and to the address provided in the application or request for a determination if the party seeking the determination is different from the owner.

It is conclusively presumed that all persons with standing to appeal have constructive notice of the determination from the date a sign providing notice that a determination has been made is prominently posted on the property that is the subject of the determination, ~~provided so long as~~ the sign remains on the property for at least 10 days. ~~The A posted~~ sign shall contain the words "Zoning Decision" or "Subdivision Decision" or similar language for other determinations in letters at least ~~6~~ six inches high and shall identify the means to contact a local government staff member for information about the determination. Posting of signs is not the only form of constructive notice. Any ~~such sign~~ posting is the responsibility of the landowner, applicant, or person ~~who that~~ sought the determination. Verification of the posting shall be provided to the staff member responsible for the determination. Absent an ordinance provision to the contrary, posting of signs ~~shall is not~~ be required.

(c) Duration of Development Approval. – Unless a different period is specified by this Chapter or other specific applicable law, including for a development agreement, a development approval issued pursuant to this Chapter expires one year after the date of issuance if the work authorized by the development approval has not been substantially commenced. Local development regulations may provide for development approvals of shorter duration for temporary land uses, special events, temporary signs, and similar development. Local development regulations may also provide for development approvals of longer duration for specified types of development approvals. Nothing in this subsection limits any vested rights secured under G.S. 160D-108 or G.S. 160D-108.1.

(d) Changes. – After a development approval has been issued, no deviations from the terms of the application or the development approval shall be made until written approval of proposed changes or deviations has been obtained. A local government may define by ordinance minor modifications to development approvals that can be exempted or administratively approved. The local government shall follow the same development review and approval process required for issuance of the development approval in the review and approval of any major modification of that approval.

(e) Inspections. – Administrative staff may inspect work undertaken pursuant to a development approval to assure that the work is being done in accordance with applicable State and local laws and of the terms of the approval. In exercising this power, staff ~~are authorized to~~

→ may enter any premises within the jurisdiction of the local government at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials; provided, however, that credentials, so long as the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

(f) Revocation of Development Approvals. – In addition to initiation of enforcement actions under G.S. 160D-404, development approvals may be revoked by the local government issuing the development approval by notifying the holder in writing stating the reason for the revocation. The local government shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable State or local law may also be revoked. The revocation of a development approval by a staff member may be appealed pursuant to G.S. 160D-405. If an appeal is filed regarding a development regulation adopted by a local government pursuant to this Chapter, the provisions of G.S. ~~160D-405(e)~~ 160D-405(f) regarding stays apply.

★ (g) Certificate of Occupancy. – A local government may, upon completion of work or activity undertaken pursuant to a development approval, make final inspections and issue a certificate of compliance or occupancy if staff finds that the completed work complies with all applicable State and local laws and with the terms of the approval. No building, structure, or use of land that is subject to a building permit required by Article 11 of this Chapter shall be occupied or used until a certificate of occupancy or temporary certificate pursuant to G.S. ~~160D-1114~~ 160D-1116 has been issued.

→ (h) Optional Communication Requirements. – A regulation adopted pursuant to this Chapter may require notice ~~and/or or informational meetings-meetings, or both,~~ as part of the administrative decision-making process. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 9, 51(a), (b), (d).)"

#### Explanation:

In addition to other clean-up changes, this proposed correction fixes incorrect cross-references.

#### Background:

#### **§ 160D-405. Appeals of administrative decisions.**

(a) Appeals. – Except as provided in G.S. 160D-1403.1, appeals of administrative decisions made by the staff under this Chapter shall be made to the board of adjustment unless a different board is provided or authorized otherwise by statute or an ordinance adopted pursuant to this Chapter. If this function of the board of adjustment is assigned to any other board pursuant to G.S. 160D-302(b), that board shall comply with all of the procedures and processes applicable to a board of adjustment hearing appeals. Appeal of a decision made pursuant to an erosion and sedimentation control regulation, a stormwater control regulation, or a provision of the housing code shall not be made to the board of adjustment unless required by a local government ordinance or code provision.

(b) Standing. – Any person who has standing under G.S. 160D-1402(c) or the local government may appeal an administrative decision to the board. An appeal is taken by filing a notice of appeal with the local government clerk or such other local government official as designated by ordinance. The notice of appeal shall state the grounds for the appeal.

(c) Repealed by Session Laws 2020-25, s. 10, effective June 19, 2020.

(d) Time to Appeal. – The owner or other party has 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal has 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice given pursuant to G.S. 160D-403(b) by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

(e) Record of Decision. – The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the decision appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(f) Stays. – An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal to the board of adjustment and any subsequent appeal in accordance with G.S. 160D-1402 or during the pendency of any civil proceeding authorized by law or appeals therefrom, unless the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation. In that case, enforcement proceedings are not stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after the request is filed.

Notwithstanding any other provision of this section, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation does not stay the further review of an application for development approvals to use the property; in these situations, the appellant or local government may request and the board may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.

(g) Alternative Dispute Resolution. – The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution. The development regulation may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

(h) No Estoppel. – G.S. 160D-1403.2, limiting a local government's use of the defense of estoppel, applies to proceedings under this section. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 10, 50(b), 51(a), (b), (d).)

#### **§ 160D-1114. Appeals of stop orders.**

(a) The owner or builder may appeal from a stop order involving alleged violation of the State Building Code or any approved local modification thereof to the North Carolina Commissioner of Insurance or his designee within a period of five days after the order is issued. Notice of appeal shall be given in writing to the Commissioner of Insurance or his designee, with a copy to the local inspector. The Commissioner of Insurance or his or her designee shall promptly

conduct an investigation, and the appellant and the inspector shall be permitted to submit relevant evidence. The Commissioner of Insurance or his or her designee shall as expeditiously as possible provide a written statement of the decision setting forth the facts found, the decision reached, and the reasons for the decision. Pending the ruling by the Commissioner of Insurance or his or her designee on an appeal, no further work shall take place in violation of a stop order. In the event of dissatisfaction with the decision, the person affected shall have the following options:

- (1) Appealing to the Building Code Council.
- (2) Appealing to the superior court as provided in G.S. 143-141.
- (b) The owner or builder may appeal from a stop order involving alleged violation of a local development regulation as provided in G.S. 160D-405. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-1116. Certificates of compliance; temporary certificates of occupancy.**

(a) At the conclusion of all work done under a building permit, the appropriate inspector shall make a final inspection, and, if the completed work complies with all applicable State and local laws and with the terms of the permit, the inspector shall issue a certificate of compliance. Except as provided by subsection (b) of this section, no new building or part thereof may be occupied, no addition or enlargement of an existing building may be occupied, and no existing building that has been altered or moved may be occupied, until the inspection department has issued a certificate of compliance.

(b) A temporary certificate of occupancy may be issued permitting occupancy for a stated period of time of either the entire building or of specified portions of the building if the inspector finds that the building may safely be occupied prior to its final completion. A permit holder may request and be issued a temporary certificate of occupancy if the conditions and requirements of the North Carolina State Building Code are met.

(c) Any person who owns, leases, or controls a building and occupies or allows the occupancy of the building or a part of the building before a certificate of compliance or temporary certificate of occupancy has been issued pursuant to subsection (a) or (b) of this section is guilty of a Class 1 misdemeanor. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 32, 51(a), (b), (d).)

Proposed Technical Correction:

**SECTION #.(c)** G.S. 160D-604 reads as rewritten:

**"§ 160D-604. Planning board review and comment.**

(a) Initial Zoning. – In order to exercise zoning powers conferred by this Chapter for the first time, a local government shall create or designate a planning board under the provisions of this Article or ~~of a special act~~ an act of the General Assembly. The planning board shall prepare or shall review and comment upon a proposed zoning regulation, including the full text of ~~such the~~ regulation and maps showing proposed district boundaries. The planning board may hold public meetings and legislative hearings in the course of preparing the regulation. Upon completion, the planning board shall make a written recommendation regarding adoption of the regulation to the governing board. The governing board shall not hold its required hearing or take action until it has received a recommendation regarding the regulation from the planning board. Following its required hearing, the governing board may refer the regulation back to the planning board for any further recommendations that the board may wish to make prior to final action by the governing board in adopting, modifying and adopting, or rejecting the regulation.

(b) Zoning Amendments. – Subsequent to initial adoption of a zoning regulation, all proposed amendments to the zoning regulation or zoning map shall be submitted to the planning board for review and comment. If no written report is received from the planning board within 30 days of referral of the amendment to that board, the governing board may act on the amendment without the planning board report. The governing board is not bound by the recommendations, if any, of the planning board.

(c) Review of Other Ordinances and Actions. – Any development regulation other than a zoning regulation that is proposed to be adopted pursuant to this Chapter may be referred to the planning board for review and comment. Any development regulation other than a zoning regulation may provide that future proposed amendments of that ordinance be submitted to the planning board for review and comment. Any other action proposed to be taken pursuant to this Chapter may be referred to the planning board for review and comment.

(d) Plan Consistency. – When conducting a review of proposed zoning text or map amendments pursuant to this section, the planning board shall advise and comment on whether the proposed action is consistent with any comprehensive or land-use plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive or land-use plan shall not preclude consideration or approval of the proposed amendment by the governing board. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the planning board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendation made.

(e) Separate Board Required. – Notwithstanding the authority to assign duties of the planning board to the governing board as provided by this Chapter, the review and comment required by this section shall not be assigned to the governing board and ~~must~~ shall be performed by a separate board. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)"

(Explanation follows the next technical correction)

**SECTION #.(d)** G.S. 160D-605 reads as rewritten:

**"§ 160D-605. Governing board statement.**

(a) Plan Consistency. – When adopting or rejecting any zoning text or map amendment, the governing board shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive or land-use plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the governing board that at the time of action on the amendment the governing board was aware of and considered the planning board's recommendations and any relevant portions of an adopted comprehensive or land-use plan. If a zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment ~~shall have~~ has the effect of also amending any future land-use map in the approved plan, and no additional request or application for a plan amendment ~~shall be~~ is required. A plan amendment and a zoning amendment may be considered concurrently. The plan consistency statement is not subject to judicial review. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the governing board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken.

(b) Additional Reasonableness Statement for Rezoning. – When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the governing board. This statement of reasonableness may consider, among other factors, (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the governing board statement on reasonableness may address the overall rezoning.

(c) Single Statement Permissible. – The statement of reasonableness and the plan consistency statement required by this section may be approved as a single statement. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)"

Explanation:

In addition to other clean-up changes, the prior two proposed corrections make conforming changes resulting from Section 11 of S.L. 2020-25, which clarified that local governments that have not adopted comprehensive plans but do have land-use plans are authorized to adopt zoning regulations.

Background:

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019**

**SESSION LAW 2020-25  
SENATE BILL 720**

AN ACT TO COMPLETE THE CONSOLIDATION OF LAND-USE PROVISIONS INTO ONE  
CHAPTER OF THE GENERAL STATUTES AS DIRECTED BY S.L. 2019-111, AS  
RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

...

**SECTION 11.** G.S. 160D-501 reads as rewritten:  
**"§ 160D-501. Plans.**

(a) ~~Preparation of Plans and Studies.~~ Requirements for Zoning. – As a condition of adopting and applying zoning regulations under this Chapter, a local government shall adopt and reasonably maintain a comprehensive plan ~~that sets forth goals, policies, and programs intended to guide the present and future physical, social, and economic development of the jurisdiction or land-use plan.~~

(a1) Plans. – A comprehensive plan sets forth goals, policies, and programs intended to guide the present and future physical, social, and economic development of the jurisdiction. A land-use plan uses text and maps to designate the future use or reuse of land. A comprehensive or land-use plan is intended to guide coordinated, efficient, and orderly development within the planning and development regulation jurisdiction based on an analysis of present and future needs.

Planning analysis may address inventories of existing conditions and assess future trends regarding demographics and economic, environmental, and cultural factors. The planning process shall include opportunities for citizen engagement in plan preparation and adoption.

~~In addition to a comprehensive plan, a~~ A local government may prepare and adopt ~~such other plans as deemed appropriate. This may include, but is not limited to, land-use plans, small area plans, neighborhood plans, hazard mitigation plans, transportation plans, housing plans, and recreation and open space plans. If adopted pursuant to the process set forth in this section, such plans shall be considered in review of proposed zoning amendments.~~

(b) Comprehensive Plan Contents. – A comprehensive plan may, among other topics, address any of the following as determined by the local government:

...

(c) Adoption and Effect of Plans. – Plans shall be adopted by the governing board with the advice and consultation of the planning board. Adoption and amendment of a comprehensive or land-use plan is a legislative decision and shall follow the process mandated for zoning text amendments set by G.S. 160D-601. Plans adopted under this Chapter may be undertaken and adopted as part of or in conjunction with plans required under other statutes, including, but not limited to, the plans required by G.S. 113A-110. Plans adopted under this Chapter shall be advisory in nature without independent regulatory effect. Plans adopted under this Chapter do not expand, diminish, or alter the scope of authority for development regulations adopted under this Chapter. Plans adopted under this Chapter shall be considered by the planning board and governing board when considering proposed amendments to zoning regulations as required by G.S. 160D-604 and G.S. 160D-605.

If a plan is deemed amended by G.S. 160D-605 by virtue of adoption of a zoning amendment that is inconsistent with the plan, that amendment shall be noted in the plan. However, if the plan is one that requires review and approval subject to G.S. 113A-110, the plan amendment shall not be effective until that review and approval is completed."

...

**SECTION 52.** Except as otherwise provided in this act, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11<sup>th</sup> day of June, 2020.

s/ Philip E. Berger  
President Pro Tempore of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

s/ Roy Cooper  
Governor

Approved 2:22 p.m. this 19<sup>th</sup> day of June, 2020

Proposed Technical Correction:

**SECTION #.(e)** G.S. 160D-944 reads as rewritten:

**"§ 160D-944. Designation of historic districts.**

(a) Any local government may, as part of a zoning regulation adopted pursuant to Article 7 of this Chapter or as a development regulation enacted or amended pursuant to Article 6 of this

Chapter, designate and from time to time amend one or more historic districts within the area subject to the regulation. Historic districts established pursuant to this Part shall consist of areas that are deemed to be of special significance in terms of their history, prehistory, architecture, or culture and to possess integrity of design, setting, materials, feeling, and association.

→ ~~Such A~~ development regulation may treat historic districts either as a separate use district classification or as districts that overlay other zoning districts. Where historic districts are designated as separate use districts, the zoning regulation may include as uses by right or as special uses those uses found by the preservation commission to have existed during the period sought to be restored or preserved or to be compatible with the restoration or preservation of the district.

(b) No historic district or districts shall be designated under subsection (a) of this section until all of the following occur:

- (1) An investigation and report describing the significance of the buildings, structures, features, sites, or surroundings included in any ~~such~~ proposed district and a description of the boundaries of ~~such the~~ district ~~has have~~ been prepared.
- (2) The Department of Natural and Cultural Resources, acting through the State Historic Preservation Officer or his or her designee, ~~shall have~~ has made an analysis of and recommendations concerning ~~such the~~ report and description of proposed boundaries. Failure of the ~~department~~ Department to submit its written analysis and recommendations to the governing board within 30 calendar days after a written request for ~~such the~~ analysis has been received by the Department of ~~Cultural Resources~~ shall relieve the governing board of any responsibility for awaiting ~~such the~~ analysis, and the governing board may at any subsequent time ~~thereafter~~ take any necessary action to adopt or amend its zoning regulation.

(c) The governing board may also, in its discretion, refer the report and proposed boundaries under subsection (b) of this section to any local preservation commission or other interested body for its recommendations prior to taking action to amend the zoning regulation.

→ With respect to any changes in the boundaries of ~~such a~~ district, subsequent to its initial establishment, or the creation of additional districts within the jurisdiction, the investigative studies and reports required by subdivision (1) of subsection (b) of this section shall be prepared by the preservation commission and shall be referred to the planning board for its review and comment according to procedures set forth in the zoning regulation. Changes in the boundaries of an initial district or proposal for additional districts shall also be submitted to the Department of Natural and Cultural Resources in accordance with the provisions of subdivision (2) of subsection (b) of this section.

On receipt of these reports and recommendations, the local government may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate zoning regulation.

★ (d) ~~The provisions of G.S. 160D-910 apply~~ G.S. 160D-914 applies to zoning or other development regulations pertaining to historic districts, and the authority under G.S. ~~160D-910(b)~~ 160D-914(b) for the ordinance to regulate the location or screening of solar collectors may encompass requiring the use of plantings or other measures to ensure that the use of solar collectors is not incongruous with the special character of the district. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)"

Explanation:

In addition to other clean-up changes, this proposed correction would change a reference to the "Department of Cultural Resources" to the "Department of Natural and Cultural Resources" to reflect the correct current name of the agency and would fix incorrect cross-references.

Background:**§ 160D-910. Manufactured homes.**

(a) The General Assembly finds that manufactured housing offers affordable housing opportunities for low- and moderate-income residents of this State who could not otherwise afford to own their own home. The General Assembly further finds that some local governments have adopted zoning regulations that severely restrict the placement of manufactured homes. It is the intent of the General Assembly in enacting this section that local governments reexamine their land-use practices to assure compliance with applicable statutes and case law and consider allocating more residential land area for manufactured homes based upon local housing needs.

(b) For purposes of this section, the term "manufactured home" is defined as provided in G.S. 143-145(7).

(c) A local government may not adopt or enforce zoning regulations or other provisions that have the effect of excluding manufactured homes from the entire zoning jurisdiction or that exclude manufactured homes based on the age of the home.

(d) A local government may adopt and enforce appearance and dimensional criteria for manufactured homes. Such criteria shall be designed to protect property values, to preserve the character and integrity of the community or individual neighborhoods within the community, and to promote the health, safety, and welfare of area residents. The criteria shall be adopted by ordinance.

(e) In accordance with the local government's comprehensive plan and based on local housing needs, a local government may designate a manufactured home overlay district within a residential district. Such overlay district may not consist of an individual lot or scattered lots but shall consist of a defined area within which additional requirements or standards are placed upon manufactured homes.

(f) Nothing in this section shall be construed to preempt or supersede valid restrictive covenants running with the land. The terms "mobile home" and "trailer" in any valid restrictive covenants running with the land shall include the term "manufactured home" as defined in this section. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

**§ 160D-914. Solar collectors.**

(a) Except as provided in subsection (c) of this section, no local government development regulation shall prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property, and no person shall be denied permission by a local government to install a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property. As used in this section, the term "residential property" means property where the predominant use is for residential purposes.

(b) This section does not prohibit a development regulation regulating the location or screening of solar collectors as described in subsection (a) of this section, provided the regulation

does not have the effect of preventing the reasonable use of a solar collector for a residential property.

(c) This section does not prohibit a development regulation that would prohibit the location of solar collectors as described in subsection (a) of this section that are visible by a person on the ground and that are any of the following:

- (1) On the facade of a structure that faces areas open to common or public access.
- (2) On a roof surface that slopes downward toward the same areas open to common or public access that the facade of the structure faces.
- (3) Within the area set off by a line running across the facade of the structure extending to the property boundaries on either side of the facade, and those areas of common or public access faced by the structure.

(d) In any civil action arising under this section, the court may award costs and reasonable attorneys' fees to the prevailing party. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

Proposed Technical Correction:

**SECTION #.(f)** G.S. 160D-946 reads as rewritten:

**"§ 160D-946. Required landmark designation procedures.**

As a guide for the identification and evaluation of landmarks, the preservation commission shall undertake, at the earliest possible time and consistent with the resources available to it, an inventory of properties of historical, architectural, prehistorical, and cultural significance within its jurisdiction. ~~Such~~ The inventories and any additions or revisions ~~thereof to them~~ shall be submitted as expeditiously as possible to the Office of Archives and History. No regulation or amendment to a regulation designating a historic building, structure, site, area, or object as a landmark ~~nor any amendment thereto may~~ shall be adopted, ~~nor may any and no property shall~~ be accepted or acquired by a preservation commission or the governing board, until all of the following procedural steps have been taken:

- (1) The preservation commission ~~shall~~ (i) prepare and adopt prepares and adopts rules of procedure and (ii) prepare and adopt prepares and adopts principles and guidelines, not inconsistent with this Part, for altering, restoring, moving, or demolishing properties designated as landmarks.
- (2) The preservation commission ~~shall make or cause~~ makes or causes to be made an investigation and report on the historic, architectural, prehistorical, educational, or cultural significance of each building, structure, site, area, or object proposed for designation or acquisition. ~~Such~~ The investigation or report shall be forwarded to the Office of Archives and History, North Carolina Department of Natural and Cultural Resources.
- (3) The Department of Natural and Cultural Resources, acting through the State Historic Preservation Officer, ~~shall, upon request of the department~~ Department or at the initiative of the preservation commission, ~~be is~~ given an opportunity to review and comment upon the substance and effect of the designation of any landmark pursuant to this Part. Any comments shall be provided in writing. If the Department does not submit its comments or recommendation in connection with any designation within 30 days following receipt by the Department of the investigation and report of the preservation commission, the commission and

any governing board ~~shall be~~ are relieved of any responsibility to consider ~~such~~ the Department's comments.

- (4) The preservation commission and the governing board ~~shall~~ hold a joint legislative hearing or separate legislative hearings on the proposed regulation. Notice of the hearing shall be made as provided by G.S. 160D-601. Following
- (5) ~~Following~~ the hearings, the governing board may adopt the regulation as proposed, adopt the regulation with any amendments it deems necessary, or reject the proposed regulation.
- (6) Upon adoption of the regulation, the owners and occupants of each designated landmark ~~shall be~~ are given written notice of ~~such~~ the designation within a reasonable time. One copy of the regulation and all amendments ~~thereto to it~~ shall be filed by the preservation commission in the office of the register of deeds of the county in which the landmark ~~or landmarks are~~ is located. In the case of any landmark property lying within the planning and development regulation jurisdiction of a city, a second copy of the regulation and all amendments ~~thereto to it~~ shall be kept on file in the office of the city or town clerk and be made available for public inspection at any reasonable time. A third copy of the regulation and any amendments shall be given to the local government building inspector. The fact that a building, structure, site, area, or object has been designated a landmark shall be clearly indicated on all tax maps maintained by the local government for such period as the designation remains in effect.
- (7) Upon the adoption of the landmark regulation or any amendment ~~thereto, it shall be the duty of to it,~~ the preservation commission to give gives notice ~~thereof of the regulation or amendment~~ to the tax supervisor of the county in which the property is located. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax supervisor in appraising it for tax purposes. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)"


#### Explanation:

This proposed correction was not requested by Professor Owens, but in addition to other clean-up changes, it would change a reference to the "Department of Cultural Resources" to the "Department of Natural and Cultural Resources" to reflect the correct current name of the agency.

#### Proposed Technical Correction:

**SECTION #.(g)** G.S. 160D-1102 reads as rewritten:

#### **"§ 160D-1102. Building code administration.**

A local government may create an inspection department and may appoint inspectors who may be given appropriate titles, such as building inspector, electrical inspector, plumbing inspector, housing inspector, zoning inspector, heating and air-conditioning inspector, fire prevention inspector, or deputy or assistant inspector, or such other titles as may be generally descriptive of the duties assigned. Every local government shall perform the duties and responsibilities set forth in G.S. ~~160D-1105~~ 160D-1104 either by (i) creating its own inspection department, (ii) creating a joint inspection department in cooperation with one or more other units of local government,  pursuant to ~~G.S. 160D-1105 or~~ Part 1 of Article 20 of Chapter 160A of the General Statutes, (iii)

contracting with another unit of local government for the provision of inspection services pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, or (iv) arranging for the county in which a city is located to perform inspection services within the city's jurisdiction as authorized by G.S. ~~160D-1105~~ 160D-1104 and G.S. 160D-202.

★ In the event that any local government fails to provide inspection services or ceases to provide ~~such inspection~~ services, the Commissioner of Insurance shall arrange for the provision of ~~such~~ inspection services, either through personnel employed by the department or through an arrangement with other units of government. In either event, the Commissioner ~~shall have~~ has and may exercise within the local government's planning and development regulation jurisdiction all powers made available to the governing board with respect to building inspection under this Article and Part 1 of Article 20 of Chapter 160A of the General Statutes. Whenever the Commissioner has intervened in this manner, the local government may assume provision of inspection services only after giving the Commissioner two years' written notice of its intention to do so; ~~provided,~~ however, ~~that~~ the Commissioner may waive this requirement or permit assumption at an earlier date upon finding that ~~such an~~ an earlier assumption will not unduly interfere with arrangements made for the provision of those services. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)"

Explanation:

In addition to other clean-up changes, this proposed correction fixes incorrect cross-references and removes an inapplicable reference to G.S. 160D-1105.

Background:

**§ 160D-1104. Duties and responsibilities.**

(a) The duties and responsibilities of an inspection department and of the inspectors in it are to enforce within their planning and development regulation jurisdiction State and local laws relating to the following:

- (1) The construction of buildings and other structures.
- (2) The installation of such facilities as plumbing systems, electrical systems, heating systems, refrigeration systems, and air-conditioning systems.
- (3) The maintenance of buildings and other structures in a safe, sanitary, and healthful condition.
- (4) Other matters that may be specified by the governing board.

(b) The duties and responsibilities set forth in subsection (a) of this section include the receipt of applications for permits and the issuance or denial of permits, the making of any necessary inspections in a timely manner, the issuance or denial of certificates of compliance, the issuance of orders to correct violations, the bringing of judicial actions against actual or threatened violations, the keeping of adequate records, and any other actions that may be required in order adequately to enforce those laws. The governing board has the authority to enact reasonable and appropriate provisions governing the enforcement of those laws.

(c) In performing the specific inspections required by the North Carolina Building Code, the inspector shall conduct all inspections requested by the permit holder for each scheduled inspection visit. For each requested inspection, the inspector shall inform the permit holder of instances in which the work inspected fails to meet the requirements of the North Carolina Residential Code for One- and Two-Family Dwellings or the North Carolina Building Code.

(d) Except as provided in G.S. 160D-1117 and G.S. 160D-1207, a local government may not adopt or enforce a local ordinance or resolution or any other policy that requires regular, routine inspections of buildings or structures constructed in compliance with the North Carolina Residential Code for One- and Two-Family Dwellings in addition to the specific inspections required by the North Carolina Building Code without first obtaining approval from the North Carolina Building Code Council. The North Carolina Building Code Council shall review all applications for additional inspections requested by a local government and shall, in a reasonable manner, approve or disapprove the additional inspections. This subsection does not limit the authority of the local government to require inspections upon unforeseen or unique circumstances that require immediate action. In performing the specific inspections required by the North Carolina Residential Building Code, the inspector shall conduct all inspections requested by the permit holder for each scheduled inspection visit. For each requested inspection, the inspector shall inform the permit holder of instances in which the work inspected is incomplete or otherwise fails to meet the requirements of the North Carolina Residential Code for One- and Two-Family Dwellings or the North Carolina Building Code.

(e) Each inspection department shall implement a process for an informal internal review of inspection decisions made by the department's inspectors. This process shall include, at a minimum, the following:

- (1) Initial review by the supervisor of the inspector.
- (2) The provision in or with each permit issued by the department of (i) the name, phone number, and e-mail address of the supervisor of each inspector and (ii) a notice of availability of the informal internal review process.
- (3) Procedures the department must follow when a permit holder or applicant requests an internal review of an inspector's decision.

Nothing in this subsection limits or abrogates any rights available under Chapter 150B of the General Statutes to a permit holder or applicant.

(f) **(Expires October 1, 2021 – see note)** If a specific building framing inspection as required by the North Carolina Residential Code for One- and Two-Family Dwellings results in 15 or more separate violations of that Code, the inspector shall forward a copy of the inspection report to the Department of Insurance. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 28(a), (b), 51(a), (b), (d).)

#### **§ 160D-1105. Other arrangements for inspections.**

A local government may contract with an individual who is not a local government employee but who holds one of the applicable certificates as provided in G.S. 160D-1103 or with the employer of an individual who holds one of the applicable certificates as provided in G.S. 160D-1103. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

#### Proposed Technical Correction:

**SECTION #.(h)** G.S. 160D-1111 reads as rewritten:

#### **"§ 160D-1111. Expiration of building permits.**

→ A building permit issued pursuant to this Article ~~shall expire~~ expires by limitation six months,  
★ or any lesser time fixed by ~~ordinance of the city council, ordinance,~~ after the date of issuance if  
→ the work authorized by the permit has not been commenced. If, after commencement, the work is discontinued for a period of 12 months, the permit ~~therefor~~ shall immediately expire. No work

→ authorized by any building permit that has expired shall ~~thereafter~~ be performed until a new permit has been secured. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)"

Explanation:

In addition to other clean-up changes, this correction removes the term "city council," which S.L. 2019-111 replaced with the defined term "governing board" throughout Chapter 160D.

Background:

**§ 160D-102. Definitions.**

Unless otherwise specifically provided, or unless otherwise clearly required by the context, the words and phrases defined in this section shall have the following meanings indicated when used in this Chapter:

- ...
- (17) Governing board. – The city council or board of county commissioners. The term is interchangeable with the terms "board of aldermen" and "boards of commissioners" and means any governing board without regard to the terminology employed in charters, local acts, other portions of the General Statutes, or local customary usage.
- ....

Proposed Technical Correction:

**SECTION #.**(i) G.S. 160D-1202 reads as rewritten:

**"§ 160D-1202. Definitions.**

→ The following ~~terms shall have the meanings whenever used or referred to as indicated when used in this Part unless a different meaning clearly appears from the context: definitions apply in this Article:~~

- ★
- (1) Owner. – The holder of the title in fee simple and every mortgagee of record.
- (2) Parties in interest. – All individuals, associations, and corporations ~~who that~~ have interests of record in a dwelling and any ~~who that~~ are in possession ~~thereof of a dwelling.~~
- (3) Public authority. – Any housing authority or any officer ~~who that~~ is in charge of any department or branch of the government of the city, county, or State relating to health, fire, building regulations, or other activities concerning dwellings in the local government.
- (4) Public officer. – The officer ~~or officers who are~~ authorized by ordinances adopted ~~hereunder under this Article~~ to exercise the powers prescribed by the ordinances and by this Article. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)"

Explanation:

In addition to other clean-up changes, this proposed correction fixes the incorrect designation of "Part" to "Article," since the definitions refer to Article 12 of Chapter 160D and there are no Parts in Article 12.